

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Toxco, Inc.)
 Map 100I, Group A, Control Map 100G, Parcel 25.00,) Anderson County
 S.I. 000)
 Map 100G, Group A, Control Map 100G,)
 Parcels 26.00, 27.00, 28.00 & 29.00, S.I. 000)
 Industrial Property)
 Tax Year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued in the aggregate at \$2,486,300 as set forth in exhibit A.

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on April 26, 2006 in Clinton, Tennessee. The taxpayer was represented by David S. Eaker, Vice President, Metals. The assessor of property, Vernon Long, was represented by N. Jay Yeager, Assistant County Attorney.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 15.9 acre tract improved with four (4) prefabricated steel frame buildings located at Flint and Franklin Roads in Oak Ridge, Tennessee. Subject property is utilized for radioactive material processing.

The taxpayer contended that subject property should be valued at \$682,000 which represents the value of the land only. In support of this position, the taxpayer offered proof to show that it was actually paid \$1,650,000 to take title to the property on July 1, 2004 by American Ecology Corp. The taxpayer asserted that subject improvements have no market value because of residual radioactive contamination that it is estimated will cost \$4,600,000 to remediate. Moreover, the taxpayer introduced excerpts from an appraisal report which valued a similar facility across the street that has no contamination at \$1,200,000 as of August 30, 2004. Finally, the taxpayer noted that it does not even carry insurance on the buildings.

The taxpayer concisely summarized its position in the “closing” portion of its tax appeal summary (collective exhibit #1) as follows:

- The real property itself has a negative value.
- Toxco operates a small radioactive processing business on the property which earned a net of approximately \$350,000 in CY 2005 so the

"business" has value only as long as a radioactive processing business resides on the real property.

- Toxco feels that a \$682,000 assessment (Land Value) is reasonable considering the negative value of the real property improvements with the consideration that a very narrow focused business can operate there with a positive cash flow. . . .

[Emphasis in Original]

The assessor contended that subject property should remain valued at \$2,486,300. In support of this position, the cost approach as summarized by the property record card was introduced into evidence. The assessor essentially maintained that the current use of subject property constitutes the highest and best use and supports a value in use appraisal of \$2,486,300.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ." Tenn. Code Ann. § 67-5-602, in turn, provides in pertinent part as follows:

(a) . . . in determining the value of all property of every kind, the assessor shall be guided by, and follow the instructions of, the appropriate assessment manuals issued by the division of property assessments and approved by the state board of equalization. . . .

(b) For determining the value of real property, such manuals shall provide for consideration of the following factors:

- (1) Location;
- (2) Current use;
- (3) Whether income bearing or non-income bearing;
- (4) Zoning restrictions on use;
- (5) Legal restrictions on use;
- (6) Availability of water, electricity, gas, sewers, street lighting, and other municipal services;
- (7) Natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land. As used in this subdivision, "crops" includes trees; and
- (8) All other factors and evidence of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

[Emphasis supplied]

* * *

The State of Tennessee Assessment Manual (1972), of course, constitutes the assessment manual referred to in Tenn. Code Ann. § 67-5-602. The manual provides in pertinent part on page AP-8 as follows:

VALUE IN USE VS VALUE IN EXCHANGE

The one point common to all definitions of market value is the presumption of a sale or exchange of the property. If the property is of the type commonly bought and sold in the market, then the subjective concept of value prevails and weight is given to value indicators derived from the market. Thus, value in exchange is the basis of estimating market value.

If a property is of a highly special design *or use*, and is of the type not commonly bought or sold in the market, then the objective concept of value prevails and other methods of estimating value must be formulated. Under a situation of this nature, the property is useful to the present owner and is of a functional design for its particular use. However, it may have little, if any, utility to buyers ordinarily forming the real estate market. Consequently, the property is said to have a value in use as opposed to value in exchange. The value of such special purpose property is generally estimated on the basis of depreciated replacement cost.

[Emphasis Supplied]

The administrative judge finds that the threshold issue which must be addressed concerns the highest and best use of subject property. The administrative judge finds that no dispute appears to exist that radioactive processing constitutes the highest and best use of subject property.

The administrative judge finds that the next issue to be decided concerns whether subject property should be valued in exchange as contended by the taxpayer or in use as contended by the assessor of property. As previously indicated, the Tennessee Assessment Manual provides for a value in use appraisal when a property (1) is of a highly special design *or use*, and (2) is of the type not commonly bought or sold in the market. The administrative judge finds that subject property satisfies both requirements. The administrative judge finds that the above-quoted language from the taxpayer's "closing" portion of its exhibit best illustrates subject property's special use and limited market.

Based upon the foregoing, the administrative judge finds subject property should be valued in use rather than in exchange. The administrative judge finds that the assessor has valued subject property in use whereas the taxpayer seeks to value the improvements in exchange. Accordingly, the administrative judge finds that the assessor's appraisal should be affirmed.

ORDER

It is therefore ORDERED that the values and assessments set forth in exhibit A are hereby adopted for tax year 2005.

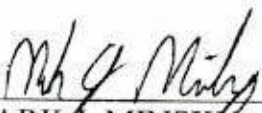
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 12th day of May, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. David S. Eaker
N. Jay Yeager, Esq.
Vernon Long, Assessor of Property

EXHIBIT A

<u>Parcel</u>	<u>Land Value (\$)</u>	<u>Improvement Value (\$)</u>	<u>Total Value (\$)</u>	<u>Assessment (\$)</u>
100I-A-100G-25	112,300	304,300	416,600	166,640
100G-A-100G-26	226,000	904,600	1,130,600	452,240
100G-A-100G-27	92,000	1,400	93,400	37,360
100G-A-100G-28	138,000	594,000	732,000	292,800
100G-A-100G-29	<u>113,700</u>	<u>0</u>	<u>113,700</u>	<u>45,480</u>
	682,000	1,804,300	2,486,300	994,520